

AMENDED IN SENATE MARCH 17, 2016

**SENATE BILL**

**No. 881**

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**Introduced by Senator Hertzberg**

**(Coauthors: Senators Anderson, Beall, Galgiani, and Wieckowski)**

**(Coauthor: Assembly Member Cristina Garcia)**

January 15, 2016

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An act to amend Sections 1214.1 and 1463.007 of the Penal Code, and to amend Sections 12807, 12808, 40508, 40509, and 40509.5 of, to add Section 13365.7 to, ~~to repeal Sections 13365 and 13365.5 and~~ *to repeal Section 13365* of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 881, as amended, Hertzberg. Vehicles: violations.

Existing law authorizes in addition to any other penalty in infraction, misdemeanor, or felony cases, the court to impose a civil assessment of up to \$300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified. *Existing law requires the court to vacate the civil assessment under these circumstances if the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail.*

This bill would provide that the ability to pay the civil assessment shall not be a prerequisite to trial, arraignment, or other court proceedings. *The bill would require the driver's failure to appear or pay to be willful in order to be subject to the civil assessment. Payment of bail, fines, penalties, fees, or a civil assessment would not be required to schedule a court hearing on the pending underlying charge.*

Existing law authorizes any county or court to implement a “comprehensive collection program” as a separate revenue collection activity, and requires the program to meet certain criteria, one of which is that the program ~~engage~~ engages in specified activities in collecting fines or penalties. One of those activities is initiating suspensions or holds for driver’s licenses, as specified.

This bill would delete initiating suspensions or holds for driver’s licenses from the list of activities the program may engage in. *The bill would require the county’s or court’s program to provide payment plans, based on the debtor’s ability to pay.*

Existing law authorizes the court to notify the Department of Motor Vehicles when a person has failed to appear, failed to pay a fine or bail, or failed to comply with a court order, with respect to various violations relating to vehicles. Existing law requires the department to suspend, *and prohibits the department from issuing or renewing*, a person’s driver’s license upon receipt of one of those notices, as specified.

*This bill would require a court to notify the department only when the driver’s failure to appear or pay is willful. This bill also would revise certain court and department administrative procedures with respect to related certifications and records. The bill would delete repeal certain provisions requiring the department to suspend suspend, or prohibiting the department from issuing or renewing, a person’s driver’s license upon receipt of one of those notices, with respect to designated violations. The bill would require the department to restore driving privileges that had been suspended pursuant to the deleted provisions, upon the request of the suspended driver. driver, no later than July 1, 2017. This bill would specifically prohibit the department from using information reported pursuant to these provisions to suspend a driver’s license. The bill would declare that its provisions do not alter existing law related to suspension of the privilege to operate a motor vehicle in connection with violations relating to reckless driving or driving under the influence of alcohol or drugs, as specified.*

*Existing law requires the department to check the record of an applicant for driver’s license issuance or renewal for notices of failure to appear in court that have been filed with the department, and to take specified actions with respect to the issuance or renewal of the license.*

*This bill would limit the above requirement to notices of failure to appear for specified offenses involving driving under the influence of drugs or alcohol, or vehicular manslaughter.*

Existing law provides that if a person convicted of an infraction fails to pay bail in installments as agreed to or a fine or an installment of a fine within the time authorized by the court, the court may impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Existing law also provides that if a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available.

This bill would delete the class C and M license restrictions for that exemption, thereby permitting the holder of any driver's license to utilize that exemption.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares that this act  
2     shall not be interpreted to alter existing law regarding suspension  
3     of the privilege to operate a motor vehicle in connection with any  
4     of the following violations:  
5     (a) Reckless driving, pursuant to Section 23103 of the Vehicle  
6     Code.  
7     (b) Reckless driving proximately causing bodily injury to a  
8     person, pursuant to Sections 23104 and 23105 of the Vehicle Code.  
9     (c) Driving under the influence of alcohol, drugs, or both,  
10    pursuant to Section 23152 of the Vehicle Code.  
11    (d) Driving under the influence of alcohol, drugs, or both, and  
12    causing bodily injury to another person, pursuant to Section 23153  
13    of the Vehicle Code.  
14    SEC. 2. Section 1214.1 of the Penal Code is amended to read:  
15    1214.1. (a) In addition to any other penalty in infraction,  
16    misdemeanor, or felony cases, the court may impose a civil  
17    assessment of up to three hundred dollars (\$300) against a  
18    defendant who *willfully* fails, after notice and without good cause,  
19    to appear in court for a proceeding authorized by law or who

1 *willfully* fails to pay all or any portion of a fine ordered by the  
2 court or to pay an installment of bail as agreed to under Section  
3 40510.5 of the Vehicle Code. This assessment shall be deposited  
4 in the Trial Court Trust Fund, as provided in Section 68085.1 of  
5 the Government Code.

6 (b) (1) The assessment imposed pursuant to subdivision (a)  
7 shall not become effective until at least 20 calendar days after the  
8 court mails a warning notice to the defendant by first-class mail  
9 to the address shown on the notice to appear or to the defendant's  
10 last known address. ~~If the defendant appears within the time~~  
11 ~~specified in the notice and shows good cause for the failure to~~  
12 ~~appear or for the failure to pay a fine or installment of bail, the~~  
13 ~~court shall vacate the assessment.~~ *Payment of bail, fines, penalties,*  
14 *fees, or a civil assessment shall not be required to schedule a court*  
15 *hearing on the pending underlying charge.*

16 (2) Payment of bail, fines, penalties, fees, or a civil assessment  
17 shall not be required in order for the court to vacate the assessment  
18 at the time of appearance pursuant to paragraph (1). Payment of a  
19 civil assessment shall not be required to schedule a court hearing  
20 on a pending underlying charge.

21 (c) If a civil assessment is imposed pursuant to subdivision (a),  
22 no bench warrant or warrant of arrest shall be issued with respect  
23 to the failure to appear at the proceeding for which the assessment  
24 is imposed or the failure to pay the fine or installment of bail. An  
25 outstanding, unserved bench warrant or warrant of arrest for a  
26 failure to appear or for a failure to pay a fine or installment of bail  
27 shall be recalled prior to the subsequent imposition of a civil  
28 assessment.

29 (d) The assessment imposed pursuant to subdivision (a) shall  
30 be subject to the due process requirements governing defense and  
31 collection of civil money judgments generally. The ability to pay  
32 the assessment shall not be a prerequisite to arraignment, trial, or  
33 other court proceedings.

34 (e) Each court and county shall maintain the collection program  
35 that was in effect on July 1, 2005, unless otherwise agreed to by  
36 the court and county. If a court and a county do not agree on a plan  
37 for the collection of civil assessments imposed pursuant to this  
38 section, or any other collections under Section 1463.010, after the  
39 implementation of Sections 68085.6 and 68085.7 of the  
40 Government Code, the court or the county may request arbitration

1 by a third party mutually agreed upon by the Administrative  
2 Director of the Courts and the California State Association of  
3 Counties.

4 SEC. 3. Section 1463.007 of the Penal Code is amended to  
5 read:

6 1463.007. (a) Notwithstanding any other law, any county or  
7 court that operates a comprehensive collection program may deduct  
8 the costs of operating that program, excluding capital expenditures,  
9 from any revenues collected under that program. The costs shall  
10 be deducted before any distribution of revenues to other  
11 governmental entities required by any other law. Any county or  
12 court operating a comprehensive collection program may establish  
13 a minimum base fee, fine, forfeiture, penalty, or assessment amount  
14 for inclusion in the program.

15 (b) Once debt becomes delinquent, it continues to be delinquent  
16 and may be subject to collection by a comprehensive collection  
17 program. Debt is delinquent and subject to collection by a  
18 comprehensive collection program if any of the following  
19 conditions is met:

20 (1) A defendant does not post bail or appear on or before the  
21 date on which he or she promised to appear, or any lawful  
22 continuance of that date, if that defendant was eligible to post and  
23 forfeit bail.

24 (2) A defendant does not pay the amount imposed by the court  
25 on or before the date ordered by the court, or any lawful  
26 continuance of that date.

27 (3) A defendant has failed to make an installment payment on  
28 the date specified by the court.

29 (c) For the purposes of this section, a “comprehensive collection  
30 program” is a separate and distinct revenue collection activity that  
31 meets each of the following criteria:

32 (1) The program identifies and collects amounts arising from  
33 delinquent court-ordered debt, whether or not a warrant has been  
34 issued against the alleged violator.

35 (2) *The program provides payment plans based on the debtor’s*  
36 *ability to pay, pursuant to Section 68632 of the Government Code.*

37 ~~(2)~~

38 (3) The program complies with the requirements of subdivision  
39 (b) of Section 1463.010.

40 ~~(3)~~

1 (4) The program engages in each of the following activities:

2 (A) Attempts telephone contact with delinquent debtors for  
3 whom the program has a ~~phone~~ *telephone* number to inform them  
4 of their delinquent status and payment options.

5 (B) Notifies delinquent debtors for whom the program has an  
6 address in writing of their outstanding obligation within 95 days  
7 of delinquency.

8 (C) Generates internal monthly reports to track collections data,  
9 such as age of debt and delinquent amounts outstanding.

10 (D) Uses Department of Motor Vehicles information to locate  
11 delinquent debtors.

12 (E) Accepts payment of delinquent debt by credit card.

13 ~~(4)~~

14 (5) The program engages in at least five of the following  
15 activities:

16 (A) Sends delinquent debt to the Franchise Tax Board's  
17 Court-Ordered Debt Collections Program.

18 (B) Sends delinquent debt to the Franchise Tax Board's  
19 Interagency Intercept Collections Program.

20 (C) Contracts with one or more private debt collectors to collect  
21 delinquent debt.

22 (D) Sends monthly bills or account statements to all delinquent  
23 debtors.

24 (E) Contracts with local, regional, state, or national skip tracing  
25 or locator resources or services to locate delinquent debtors.

26 (F) Coordinates with the probation department to locate debtors  
27 who may be on formal or informal probation.

28 (G) Uses Employment Development Department employment  
29 and wage information to collect delinquent debt.

30 (H) Establishes wage and bank account garnishments where  
31 appropriate.

32 (I) Places liens on real property owned by delinquent debtors  
33 when appropriate.

34 (J) Uses an automated dialer or automatic call distribution  
35 system to manage telephone calls.

36 *SEC. 4. Section 12807 of the Vehicle Code is amended to read:*

37 12807. The department shall not issue or renew a driver's  
38 license to any ~~person~~ *person under either of the following*  
39 *circumstances:*

1 (a) When a license previously issued to the person under this  
2 code has been suspended until the expiration of the period of the  
3 suspension, unless cause for suspension has been removed.

4 (b) When a license previously issued to the person under this  
5 code has been revoked until the expiration of one year after the  
6 date of the revocation, except where a different period of revocation  
7 is prescribed by this code, or unless the cause for revocation has  
8 been removed.

9 ~~(c) When the department has received a notice pursuant to~~  
10 ~~Section 40509 or 40509.5, unless the department has received a~~  
11 ~~certificate as provided in those sections.~~

12 *SEC. 5. Section 12808 of the Vehicle Code is amended to read:*

13 12808. (a) ~~The department shall, before~~ *Before* issuing or  
14 renewing any license, ~~the department shall~~ check the record of the  
15 applicant for conviction of traffic violations and traffic accidents.

16 (b) ~~The department shall, before~~ *Before* issuing or renewing  
17 any license, ~~the department shall~~ check the record of the applicant  
18 for notices of failure to appear in court filed with ~~it~~ *the department*  
19 *pursuant to subdivision (c) of Section 40509.5* and shall withhold  
20 or shall not issue a license to any applicant who has violated his  
21 or her written promise to appear in court unless the department  
22 has received a certificate issued by the magistrate or clerk of the  
23 court hearing the case in which the promise was given showing  
24 that the case has been adjudicated or unless the applicant's record  
25 is cleared as provided in Chapter 6 (commencing with Section  
26 41500) of Division 17. In lieu of the certificate of adjudication, a  
27 notice from the court stating that the original records have been  
28 lost or destroyed shall permit the department to issue a license.

29 (c) (1) Any notice received by the department pursuant to  
30 Section 40509, 40509.1, or 40509.5, except subdivision (c) of  
31 Section 40509.5, that has been on file five years may be removed  
32 from the department records and destroyed at the discretion of the  
33 department.

34 (2) Any notice received by the department under subdivision  
35 (c) of Section 40509.5 that has been on file 10 years may be  
36 removed from the department records and destroyed at the  
37 discretion of the department.

38 ~~(d) This section shall become operative on January 1, 2011.~~

39 ~~SEC. 4.~~

40 *SEC. 6. Section 13365 of the Vehicle Code is repealed.*

1     ~~SEC. 5.—Section 13365.5 of the Vehicle Code is repealed.~~

2     ~~SEC. 6.—~~

3     ~~SEC. 7.~~ Section 13365.7 is added to the Vehicle Code, to read:

4     13365.7. The department shall restore all driving privileges  
5     suspended pursuant to former Section 13365 ~~or 13365.5~~ upon the  
6     request of the suspended ~~driver.~~ *driver, no later than July 1, 2017.*

7     ~~SEC. 7.—~~

8     ~~SEC. 8.~~ Section 40508 of the Vehicle Code is amended to read:

9     40508. (a) A person willfully violating his or her written  
10    promise to appear or a lawfully granted continuance of his or her  
11    promise to appear in court or before a person authorized to receive  
12    a deposit of bail is guilty of a misdemeanor regardless of the  
13    disposition of the charge upon which he or she was originally  
14    arrested.

15   (b) A person willfully failing to pay bail in installments as  
16   agreed to under Section 40510.5 or a lawfully imposed fine for a  
17   violation of a provision of this code or a local ordinance adopted  
18   pursuant to this code within the time authorized by the court and  
19   without lawful excuse having been presented to the court on or  
20   before the date the bail or fine is due is guilty of a misdemeanor  
21   regardless of the full payment of the bail or fine after that time.

22   (c) A person willfully failing to comply with a condition of a  
23   court order for a violation of this code, other than for failure to  
24   appear or failure to pay a fine, is guilty of a misdemeanor,  
25   regardless of his or her subsequent compliance with the order.

26   (d) If a person convicted of an infraction fails to pay bail in  
27   installments as agreed to under Section 40510.5, or a fine or an  
28   installment thereof, within the time authorized by the court, the  
29   court may, except as otherwise provided in this subdivision,  
30   impound the person's driver's license and order the person not to  
31   drive for a period not to exceed 30 days. Before returning the  
32   license to the person, the court shall endorse on the reverse side  
33   of the license that the person was ordered not to drive, the period  
34   for which that order was made, and the name of the court making  
35   the order. If a defendant satisfies the court that impounding his or  
36   her driver's license and ordering the defendant not to drive will  
37   affect his or her livelihood, the court shall order that the person  
38   limit his or her driving for a period not to exceed 30 days to driving  
39   that is essential in the court's determination to the person's  
40   employment, including the person's driving to and from his or her



place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

~~SEC. 8.~~

SEC. 9. Section 40509 of the Vehicle Code is amended to read:

40509. (a) Except as required under subdivision (c) of Section 40509.5, if any person has *willfully* violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign ~~and file with the department~~ a certificate to that effect. *If the court provided the department with notice of the initial failure to appear, the certificate also shall be filed with the department.*

(b) If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue ~~and file with the department~~ a certificate showing that the fine has been paid. *If the court provided the department with notice of the initial failure to pay, the certificate also shall be filed with the department.*

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section 40508.5, which are unpaid by any person.

(2) Once a court has established the amount of bail, fines, assessments, and fees, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) With respect to a violation of this code, this section is applicable to any court that has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(e) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

(f) ~~This section does not authorize the department to~~ *The department shall not* suspend a driver's license on the basis of information reported to the department pursuant to this section.

~~SEC. 9.~~

*SEC. 10.* Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), a person has *willfully* violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court

1 hearing the case shall sign ~~and file with the department~~ a certificate  
2 to that effect. *If the court provided the department with notice of*  
3 *the initial failure to appear, the certificate also shall be filed with*  
4 *the department.*

5 (b) If, with respect to an offense described in subdivision (e), a  
6 person has willfully failed to pay a lawfully imposed fine, or bail  
7 in installments as agreed to under Section 40510.5, within the time  
8 authorized by the court or to pay a fine pursuant to subdivision (a)  
9 of Section 42003, the magistrate or clerk of the court may give  
10 notice of the fact to the department for a violation, except violations  
11 not required to be reported pursuant to paragraphs (1), (2), (3), (6),  
12 and (7) of subdivision (b) of Section 1803. If thereafter the fine or  
13 bail is fully paid, the magistrate or clerk of the court shall issue  
14 ~~and file with the department~~ a certificate showing that the fine or  
15 bail has been paid. *If the court provided the department with notice*  
16 *of the initial failure to pay, the certificate also shall be filed with*  
17 *the department.*

18 (c) If a person charged with a violation of Section 23152 or  
19 23153, or Section 191.5 of the Penal Code, or subdivision (a) of  
20 Section 192.5 of that code has violated a lawfully granted  
21 continuance of his or her promise to appear in court or is released  
22 from custody on his or her own recognizance and *willfully* fails to  
23 appear in court or before the person authorized to receive a deposit  
24 of bail, or violated an order to appear in court, the magistrate or  
25 clerk of the court shall give notice to the department of the failure  
26 to appear. If thereafter the case in which the notice was given is  
27 adjudicated or the person who has violated the court order appears  
28 in court or otherwise satisfies the order of the court, the magistrate  
29 or clerk of the court hearing the case shall ~~prepare and forward to~~  
30 ~~the department~~ a certificate to that effect. *If the court provided the*  
31 *department with notice of the initial failure to appear, the*  
32 *certificate also shall be filed with the department.*

33 (d) Except as required under subdivision (c), the court shall mail  
34 a courtesy warning notice to the defendant by first-class mail at  
35 the address shown on the notice to appear, at least 10 days before  
36 sending a notice to the department under this section.

37 (e) If the court notifies the department of a failure to appear or  
38 pay a fine or bail pursuant to subdivision (a) or (b), no arrest  
39 warrant shall be issued for an alleged violation of subdivision (a)  
40 or (b) of Section 40508, unless one of the following criteria is met:

1 (1) The alleged underlying offense is a misdemeanor or felony.

2 (2) The alleged underlying offense is a violation of any provision  
3 of Division 12 (commencing with Section 24000), Division 13  
4 (commencing with Section 29000), or Division 15 (commencing  
5 with Section 35000), required to be reported pursuant to Section  
6 1803.

7 (3) The driver's record does not show that the defendant has a  
8 valid California driver's license.

9 (4) The driver's record shows an unresolved charge that the  
10 defendant is in violation of his or her written promise to appear  
11 for one or more other alleged violations of the law.

12 (f) Except as required under subdivision (c), in addition to the  
13 proceedings described in this section, the court may elect to notify  
14 the department pursuant to subdivision (c) of Section 40509.

15 (g) This section is applicable to courts that have elected to  
16 provide notice pursuant to subdivision (b). The method of  
17 commencing or terminating an election to proceed under this  
18 section shall be prescribed by the department.

19 (h) A violation subject to Section 40001, that is the  
20 responsibility of the owner of the vehicle, shall not be reported  
21 under this section.

22 (i) (1) ~~This section does not authorize the department to~~ *The*  
23 *department shall not* suspend a driver's license on the basis of  
24 information reported to the department pursuant to this section.

25 (2) This subdivision does not apply to a suspension pursuant to  
26 Section 13365.2 as a result of information provided under  
27 subdivision (c).